

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRINKER INTERNATIONAL PAYROLL
COMPANY L.P.

and

Case 27-CA-110765

THE SAWAYA & MILLER LAW FIRM

NOTICE TO SHOW CAUSE

On December 1, 2015, the National Labor Relations Board issued a Decision and Order, 363 NLRB No. 54, finding that the Respondent violated Section 8(a)(1) of the Act by both (1) maintaining and enforcing a mandatory individual arbitration policy and (2) interfering, through the arbitration policy, with employees' ability to access the Board's processes. On June 19, 2018, the United States Court of Appeals for the Fifth Circuit summarily granted review of the portion of the Board's Order governed by the Supreme Court's decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), and remanded the second finding back to the Board.

At the time of the Board's decision, and Administrative Law Judge Lauren Esposito's June 4, 2014 decision that the Board affirmed, the issue of whether the maintenance of a work rule or policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which held that an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the language to prohibit Section 7 activity." *Id.* at 647. The

Board has since overruled the *Lutheran Heritage* “reasonably construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154 at slip op. 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this proceeding should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.¹

NOTICE IS GIVEN that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before December 30, 2020 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., December 16, 2020

By direction of the Board:

Roxanne L. Rothschild

Executive Secretary

¹ See generally *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 5 (2019) (explaining the Board’s post-*Boeing* approach to analyzing allegations that a mandatory arbitration agreement unlawfully restricts access to the Board).